LIBRARY
SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
SEP 17 1973
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-493

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, AFL-CIO; EDWARD J. CARLOUGH; and DAVID TODD, *Petitioners,*

v.

ANTHONY G. PIGNOTTI, as an individual member of Local #3 Sheet Metal Workers' International Association, *Respondent.*

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

September 17, 1973.

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

INDEX

	Page
Order of the District Court	1a
Memorandum Decision of the District Court	3a
Opinion of the Court of Appeals	19a
Judgment of the Court of Appeals	30a

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

Civil No. 72-0-132

ANTHONY G. PIGNOTTI, as an individual member of LOCAL #3 SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, *Plaintiff*,

v.

LOCAL #3 SHEET METAL WORKERS INTERNATIONAL ASSOCIATION; SHEET METAL WORKERS INTERNATIONAL ASSOCIATION; SHEET METAL WORKERS NATIONAL PENSION FUND; LESTER FORMAN; WALTER BRADER; EDWARD J. CARLOUGH; DAVID TODD; OMAHA-COUNCIL BLUFFS SHEET METAL CONTRACTORS ASSOCIATION (NOW SMACNA-OMAHA-COUNCIL BLUFFS, INC.), *Defendants*.

Order

This matter comes before the Court for decision.

Pursuant to the Memorandum Decision to be issued in this matter, the Court finds that:

1. The defendant, Omaha-Council Bluffs Sheet Metal Contractors Association is dismissed as a party defendant;

2. The defendant, Sheet Metal Workers National Pension Fund, is dismissed as a party defendant;

3. The defendants will be jointly and severally liable for damages in an amount equal to the amount of money that has been deducted from the wages of the members of Local #3 since August 2, 1971, and paid to the Sheet Metal Workers National Pension Fund. This amount should be calculated as of a date not to exceed 30 days from the date of this decision, as agreed upon by the parties and submitted to the Court for approval. If the defendants can legally obtain back from the Sheet Metal Workers National Pension Fund the amount of this judgment, it may be used to satisfy this portion of the judgment. The funds will be paid into an escrow account in the local bank used by Local #3. Following the negotiation of the new contract, if the parties can agree to a final vote to be binding for the duration of the new contract on the pension plan controversy, then the funds are to be held in the escrow account pending the outcome of the vote. If then the vote is for participation on a pension plan, the funds are to be paid from the escrow account to the particular plan chosen. If no agreement can be reached as to having a vote or the vote that is held is against any plan, then the funds are to be returned pro rata to the members of Local #3, from whose paychecks the funds were deducted, whether or not they are presently members of Local #3;

4. The defendants will be enjoined from further delaying the implementation of the October 22, 1971, vote and will be required to cease within thirty (30) days all participation on the part of the members of Local #3 in the Sheet Metal Workers National Pension Fund. This particular date should also be agreed upon by the parties and submitted along with the judgment amount as above ordered;

5. To insure that this decision is not futile, the defendants will be enjoined from negotiating into the new contract any pension provision more binding on Local #3 or its members than the present contractual provisions. In addition, the defendants will be enjoined from taking any action

to dissolve Local #3, in order to assign its members to other Locals that do participate in the National Plan.

IT IS SO ORDERED.

Dated this 30th day of May, 1972.

BY THE COURT

/s/ Robert V. Denney
ROBERT V. DENNEY
United States District Judge

Memorandum Decision

DENNEY, District Judge

This case has been tried to the Court without a jury and the following memorandum shall constitute the Court's findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

Since 1966, the Sheet Metal Workers International Association (hereafter the International Union) has promoted a national pension plan for all sheet metal local unions to join. That plan is called the Sheet Metal Workers National Pension Fund (hereafter National Plan).

In the month of July, 1969, Local # 3 Sheet Metal Workers International Association (hereafter Local #3), and the Omaha-Council Bluffs Sheet Metal Contractors Association (hereafter Contractors Association) entered into a collective bargaining agreement to expire on May 31, 1972. In that contract, Article VIII provides that:

> Section 14. Pension: The Employers agree that upon a thirty (30) days notice by the Sheet Metal Workers Local #3 to deduct specific amount on specific dates from the gross hourly wage rate as requested by the Union and pay said amount to the *Sheet Metal Workers Pension Fund.* By the execution of this Agreement,

> the Employer also agrees to enter into the appropriate Trust Agreement within the time limit specified above necessary for the administration of such fund and to designate the Employer Trustees under such Agreement hereby waiving all notice thereof and ratifying all actions taken or to be taken by such Trustees within the scope of their authority. (Emphasis added)

It was explained to the members and it was the understanding of the members at the time the contract was ratified that the above provision meant that the details of the pension plan would be decided later and that any plan before selection would be put to a vote of the members. The reference to "Sheet Metal Workers Pension Fund" did not refer solely to the National Plan.

At Local # 3's regular meeting on September 4, 1969, it was voted that a pension committee be elected to examine the various pension plans in which Local #3 could participate. At a subsequent meeting on January 8, 1970, Jim Pignotti, Paul Wild, Bob Holtz and Jim Newburger were elected to the Pension Committee. The Pension Committee met first on February 19, 1970, and discussed various possible plans. It met again on February 24, 1970, and listened to Paul Stuckenschneider, International Organizer from the International Union, on the merits of the National Plan. At the April 16, 1970, meeting, it was resolved to allow all parties an opportunity to present their individual plans before a recommendation was made. Thus, on May 4, 1970, Ken Fridrich, of Bankers Life, presented the latter's pension plan and on May 20, 1970, John Wilson, of the Prudential Insurance Company, presented its plan.

On July 6, 1970, Edward Carlough, General President of the International Union, wrote to Lester Forman, Business Agent of Local #3, regarding recent changes in the National Plan. The changes were discussed at the Pension Committee's meeting of August 3, 1970. At the meeting

of August 10, 1970, Don Schinzel, of Commercial Savings and Loan Association, presented its plan.

It was announced via the Local #3 monthly newsletter that there would be a special meeting on October 22, 1970, to vote on the "pension plan best for Local #3 and the amount of contribution to be submitted and the commencement date." On October 9, 1970, Stuckenschneider wrote to Forman that he would be at the October 22, 1970, meeting to explain the National Plan. At the meeting of October 22, 1970, the members voted not to vote on a pension plan until all members had seen all the plans available. On October 27, 1970, Stuckenschneider wrote again to Forman, this time asking for copies of any other plan presented to the members, that he could compare it with the National Plan. On December 18, 1970, the Pension Committee met again. Stuckenschneider and Dick Reznek from the International Union represented the National Plan and interrogated the Equitable representatives as to the merits of their plan. On December 30, 1970, Stuckenschneider wrote to Jim Pignotti, criticizing and evaluating the Equitable Plan. The Equitable Plan was again discussed at the regular meeting of Local #3 on January 7, 1971. Sometime in January of 1971, the various members of the Pension Committee drafted letters to the general membership regarding their individual recommendations on the pension plan question. All of the letters except that of Jim Pignotti were sent out to the membership. Jim Pignotti's letter was instead read to the membership at a subsequent regular meeting. Walter Brader's letter criticized the Equitable Plan. The letter of Bob Hotz recommended the National Plan. James Newburger's letter stated that he did not feel a local plan was advisable. Jim Pignotti recommended that no plan be adopted at that time. On January 24, 1971, Stuckenschneider wrote to Hotz regarding the earnings of the National Plan. Then, shortly thereafter, Lester Forman, the Business Agent and not a member of the Pension Committee, using apparently the same facilities Local #3 used to publish the monthly

newsletter, sent a letter to the members promoting the National Plan and entreating the members not to forget the special pension meeting on March 25, 1971. The monthly newsletter of Local #3 announced the special meeting for March 25, 1971, as the "purpose of this meeting will be to vote for or against a pension plan if accepted the amount of money to be contributed and the month contributions will begin." At the March 25, 1971, meeting, Forman made a motion that the National Plan be adopted starting June 1, 1971. The membership defeated the National Plan by a vote of 93-66.

At the next regular meeting on April 1, 1971, there was again a motion to have at the next regular meeting, as a special order of business, a vote on the pension plan but, if favorable, to table the amount of money until it could be determined what an expected raise in pay for the members would total.

At this point, it should be noted that the Union's Consituation and Ritual provides in Article Ten (10), Section 6—Meetings:

> Sec. 6(a). Each local union shall determine the times and places for the holding of its regular meetings, and determine how many of its members shall constitute a quorum. Special meetings shall be called by the local union president or upon the recommendation of the local Executive Board or upon the request of at least ten (10) members in good standing or ten percent (10%) of the members in good standing, whichever is the greater. The call for such special meeting shall specify the time, place and purposes thereof, and no subjects other than those specified in the call shall be considered at such meeting.

On April 10, 1971, Brader received a petition by more than ten percent (10%) of the members to call a special meeting to vote again on the pension plan. There appears

to have been no hesitancy in Brader's willingness to honor the petition. However, since the pension plan was already scheduled to be voted upon, Brader saved the petition, instead of indicating that the vote of May 6, 1971, should satisfy the petitioners. At the May 6, 1971, meeting, it was voted 58 to 43 that Local #3 did not want a pension plan. Later in the meeting, a motion was made, according to the minutes, to "postpone indefinitely the pension plan and reference thereto. (Rule 23)" Rule 23 of the Constitution and Ritual of the Union provides that "[w]hen a question is postponed indefinitely it shall not come up again except by a two-thirds (⅔) vote." The vote was taken and by Brader's count the motion was defeated 29 to 24. Quickly, a division of the house was called which revealed that the true vote was 60 to 30 in favor of postponing the pension plan consideration indefinitely. Brader used the petition he had previously received to call another special meeting for June 2, 1971, to vote again, this time by secret ballot, whether or not to begin contributing 20 cents to the National Plan. Such contributions were to begin on July 2, 1971. In the meantime, Brader frantically sought help from Carlough and received via Lonnie Gaither, assistant to Carlough, the bald conclusion that the motion to divide the house during the May 6, 1971, meeting was out of order. Before the vote could be forced at the May 27, 1971 meeting, a point of order was made that the meeting itself was out of order, since it had been called specially to vote on the pension question and Rule 30 of the Constitution and Ritual controlled. Rule 30 provides that "[w]hen a question has been decided, it can be reconsidered only at the same meeting or on the next regular meeting night." This not being a regular meeting, the question could not be reconsidered. Brader overruled the point of order. The ruling of Brader was challenged by the membership and the challenge was sustained upon vote of the members.

Brader was undaunted by this third defeat of the pension plan within as many months and again besought Carlough

to personally intervene, which Carlough did by using his power as General President to call yet another meeting, this time for June 21, 1971, to vote again on the National Plan. At the June 21, 1971, meeting, the secret vote was 77 for, 71 against and 3 void ballots. Brader, Forman, Carlough and their supporters had finally succeeded in getting a favorable vote to the plan. Brader quickly wrote to Robert Hooker, the Executive Director of the Contractors Association to begin deducting on August 1, 1971, 20 cents per hour and sending it to the National Plan. It is interesting to note that the International's monthly magazine for July showed a map, apparently as of June 15, 1971, listing all locals and their locations that were then participating in the National Plan. Local #3 was listed as participating in the National Plan, although, as of June 15, 1971, the plan had been beaten three times in a row. The International was apparently very confident as to the anticipated outcome of the June 21, 1971, vote.

The members against present implementation of a pension plan were amazed at the vote and decided to attempt to use the special meeting provisions of the Constitution and Ritual that Brader had previously been so eager to allow. On June 23, 1971, several petitions were circulated to obtain the required ten percent (10%) signatures. Forman was presented with the petition, but he said there weren't enough signatures and rejected it. Sometime in July, 1971, Forman visited Tony Pignotti, Jim Pignotti's brother, and the plaintiff herein at the jobsite where Tony Pignotti was working. Forman told Tony Pignotti to keep his mouth shut, that the International could fine him if it chose.

On July 9, 1971, David Todd, an agent for the International Union who had been investigating and monitoring Local #3's activities, wrote Carlough that the International should take over Local #3 now, ostensibly because Local #3 was not getting enough jobs out in the state.

Finally, on July 15, 1971, with an overwhelming number of signatures having been obtained, Brader accepted the petition, but said it was too late. Conservations with Brader on succeeding nights proved fruitless. On July 26, 1971, with the August 1, 1971, time for beginning deductions rapidly approaching, Jim Pignotti and 113 other members filed suit in this Court to enjoin the deductions and requiring Brader to honor the petition. In that suit, the Court was alleged to have jurisdiction to entertain the suit pursuant to 29 U.S.C.A. § 106, governing employer payments to unions. The Court sustained a motion by defendants to dismiss on grounds of no jurisdiction under that statute.

On August 31, 1971, Brader wired Carlough again, this time informing him about the dismissal of the Court action and asking Carlough what to do about the petition. Carlough wired back on September 1, 1971, that Carlough was declining to decide whether to honor the petition or not, but that Brader should make a decision. Carlough stated that if the members didn't like Brader's decision then they could appeal it, which would be to Carlough himself. Finally, Brader decided to honor the petition and the monthly newsletter announced a special meeting for October 22, 1971, to vote on the pension plan again. On October 18, 1971, Todd received a letter from Carlough to update his reasons for taking over Local #3. At the October 22, 1971 meeting, by far the largest turnout of members of the union, the members voted 175 to 119 not to retain the National Plan.

On October 27, 1971, Brader telegraphed the Contractors Association that a meeting was desired to discuss how to cease the pension plan deductions. However, subsequent actions indicate to the Court that there was never any real desire of the defendants to implement vote of the members of October 22, 1971, and that the telegram itself was, at best, self-serving. On November 3, 1971, formal charges were filed with the International Union by the Local Execu-

tive Board against James Pignotti, alleging that he had violated the International Union's Constitutional provision of "[e]ngaging in any conduct which is detrimental to the best interests of this association or any subordinate unit thereof or which will bring said union into disrepute." The Executive Board of Local #3 has seven members, of which Brader and Forman are two. The alleged violation occurred when James Pignotti had told a local newsman the results of the October 22, 1971, vote.

Almost a month had passed since the vote, with nothing having been accomplished to implement the vote of October 22, 1971, when, on November 15, 1971, James Pignotti filed formal charges against Forman for refusing to implement the vote and appealed to Carlough to do something about Brader and Forman's refusal to follow the will of the majority of the members. The next day, on November 16, 1971, the Executive Committee of Local #3 voted to send another telegram to the Contractors Association, requesting a meeting, and such telegram was sent on November 17, 1971. In contrast, when the plan passed in June, 1971, there were apparently no similar problems in getting together with the Contractors Association to start the deduction. On November 30, 1971, Edward Fogarty, attorney for plaintiffs, wrote to Carlough that suit was being filed but would be stayed if the necessary acts to terminate the plan were completed by December 15, 1971. On December 1, 1971, the Executive Board met with the Contractors Association. The Contractors reasonably requested that any request to delete the plan be made in writing, and in such a maner that it needed no further ratification of the union; (2) that the Contractors receive a release for any liability on their part; and (3) that the pension plan could not be reinstated during the life of the contract, which was approximately six more months. The monthly newsletter of Local #3 indicated that, although the Executive Board of Local #3 had met with the Contractors Association, they would need a legal opinion before proceeding.

On January 4, 1972, Carlough wrote to Todd and told him to take over the Union as trustee, that the letter was in confirmation of telephone instructions regarding the take-over, and that there would be no expenditure of funds or other official action without Todd's express approval. On January 5, 1972, Carlough wrote to James Pignotti that Carlough wouldn't take any action on the appeal of Pignotti to Carlough of the refusal of Brader and Forman to implement the vote of October 22, 1971, because he would have to pass on the legality of the meeting and the duties of the business agent and this might prejudice charges against the business agent. The news of the take-over was announced to the membership at the January 6, 1972, regular meeting of Local #3. At that meeting, a letter was read from Attorney Fogarty, plaintiff's attorney, that stated that the National Plan required that a member work 1200 hours after adoption of the Plan before he had any vested rights in the Plan. No one on January 6, 1971, had the required 1200 hours, although several members would accumulate the required 1200 hours sometime in late January, 1972. Attorney Fogarty also gave his opinion of the tactics used by the minority to stall the implementation of the October 22, 1971, vote and the lack of legal hurdles in putting it into effect. A letter was also read from Attorney Weinberg, the Union attorney, to the members, to the effect that any official who agreed to deletion of the Plan might violate fiduciary duties to act for the best interests of the people they represent. Todd stated at the meeting that he would let the members do anything they wanted to do about the plan, but when the motion was made to have Attorneys Weinberg and Fogarty get together at Union expense to implement the October 22, 1971, vote, Todd said the Plan was going to be left alone, Todd would be able to negotiate the Plan into the contract coming up in June of 1971, and the members would not be allowed to vote to ratify the contract. In a later meeting with Tony Pignotti and some of the other members, Todd told Tony Pignotti that he would not take steps to end the Plan.

On January 29, 1972, Jim Pignotti died and this suit was brought by Tony Pignotti, his brother.

On March 23, 1972, the International Union held a hearing on the trusteeship that Carlough had imposed on Local #3. The hearing was held in Washington, D. C., and it affirmed the trusteeship.

The plaintiff alleges that the foregoing facts as found by the Court constitute violations of 29 U.S.C.A. §§ 411 (a)(1) and 501.

29 U.S.C.A. § 411(a)(1) provides that:

> Equal rights.—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

29 U.S.C.A. § 501 provides in part:

> (a) The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constituion and bylaws and any resolution of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any manner connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any

profit received by him in whatever capacity in connection with transactions conducted by him or under his direction or in behalf of the organization. . . .

Before moving to the specific violations, the Court finds that it should sustain the motion to dismiss this action as to the Contractors Association. It is clear that neither 29 U.S.C.A. § 411 or § 501 reaches a claim against an employer. *Duncan* v. *Peninsula Shipbuilders Association*, 394 F.2d 237 [4th Cir. 1968] and *Aho* v. *Bintz*, 290 F.Supp. 577 [D. Minn. 1968]. The Court also sustains the motion to dismiss as to the defendant, Sheet Metal Workers National Pension Fund.

Except for Carlough, the trustees of the fund are not before the Court and the trustees are indispensible parties to any direct action against the fund. *Warshaw* v. *Local No. 415, International Ladies' Garment Workers Union*, 325 F.2d 143 [5th Cir. 1963].

§ 411 Violations

The Court finds from the facts set out above that defendants, Carlough, Brader and Forman, early in 1971 set out to obtain the participation of Local #3 in the National Plan, whether the majority of the Union wanted the Plan or not. The repeated votes, especially after the motion to postpone indefinitely, amply demonstrate the singlemindedness of these defendants. The use by Carlough of his power to call the election of June 21, 1971, in the aftermath of the three defeats of the Plan in and of itself violated the members' § 411 rights to an equal right to vote and to have that vote be meaningful. The delay by Brader and Forman in calling the special meeting mandated by the petition of July 15, 1971, denied the plaintiff his § 411 rights to equal rights and privileges to participate in the meetings of Local #3. The blatant refusal of Brader, Forman and Carlough to implement the vote of October 22, 1971, denied the plaintiff his § 411 right to vote as effectively as if they

had stuffed the ballot box itself, which has been held to be a violation of § 411. *Beckman* v. *Local No. 46 International Ass'n of Bridge, S. & O. I. Workers*, 314 F.2d 848 [7th Cir. 1963]. Defendant Carlough specifically violated § 411 when he took over the Union and appointed trustee Todd. The Court is convinced that the purpose of the trusteeship was to prevent any further action of the members toward implementing the vote to discontinue the Plan. In these circumstances, abolishment of the right to vote via a trusteeship amounts to a denial of the § 411 right to vote and cannot be said to be a reasonable rule or restriction on that right. This trusteeship is akin to a classification of all members as associates or second class members. Such has been held to be an unequal application of the right to vote and violative of § 411. *O'Brien* v. *Paddock*, 246 F.Supp. 809 [S.D. N.Y. 1965]. *See* also *Vestal* v. *International Brotherhood of Teamsters*, 245 F.Supp. 623 [M.D. Tenn. 1965]. Finally, defendant Todd's refusal to implement the vote of October 22, 1971, and his intentions to seal the tomb on the controversy by negotiating it into the future contract and then not to allow the members to ratify it constitutes a violation of § 411. The power of office in the Union cannot be used to adopt rules the effect of which is to deny the members the right to an equal vote. *Libutti* v. *DiBrizzi*, 337 F.2d 216 [2nd Cir. 1964]. Although Todd might, as a trustee, prevent future meetings and votes, nowhere has it been held that the trustee can upset the results of meetings and votes occurring prior to the imposition of the trusteeship. The International Union will be bound by the acts of its agents, Carlough and Todd. *International Brotherhood of Teamsters* v. *United States*, 275 F.2d 610 [4th Cir. 1960].

§ 501 VIOLATIONS

This Court is guided by the opinion of Judge Larson in *Nelson* v. *Johnson*, 212 F.Supp. 233 [D. Minn. 1963], and of the Eighth Circuit in that case on appeal, *Johnson* v. *Nelson*, 325 F.2d 646 [8th Cir. 1963] as to what constitutes violations of § 501. "§ 501 imposes fiduciary re-

sponsibility in its broadest application and is not confined in its scope to union officials only in their handling of money and property affairs." *Johnson* v. *Nelson*, supra, at p. 651.

It is clear to the Court that all of the defendants have breached their fiduciary duties in allowing their personal feelings to interfere with their duties as officers. Defendants Brader and Forman early demonstrated their allegiance to the National Plan. Brader by the use of his position as President repeatedly called meetings and then prevailed upon Carlough to call another meeting to secure an affirmative vote of the members. Forman went so far as to use the facilities of Local #3 to publish and influence the views of the members. Then, having finally achieved an affirmative vote, Brader and Forman delayed any other vote. Unable to delay any longer, they did the next best thing and refused to implement the vote of October 22, 1971, against the National Plan.

Counsel for the defendants has argued that the Court should take no action because there are members who now, because of the delay, have vested rights under the Plan. It was no doubt the idea of the defendants that, if they delayed, the Court would be unable, vesting having occurred, to unscramble the situation, and negotiating the Plan into the new contract would finish off the plaintiff.

The Court is not unmindful of the position of these members who may have vested rights under the Plan, but it is confident that they will be able to seek separate redress against the defendants who have caused their plight, should they be so inclined. It is not the plaintiff who should be prejudiced by the tardiness and breach of their fiduciary duties by the defendants.

Defendant Carlough breached his § 501 trust when he joined or led Brader and Forman in their efforts. His calling of the June 21, 1971 meeting, in light of the past defeats of the National Plan and the motion to postpone in-

definitely, and finally taking over the Union itself amount to total disregard of his § 501 trust. Defendant Todd, as trustee, breached his own § 501 trust duties when he refused to allow the vote of October 22, 1971, to be implemented and supplemented it with an intent to negotiate the Plan into the new contract and not allow the members to ratify the new contract. The International Union will be bound by the acts of its agents, Carlough and Todd. *International Brotherhood of Teamsters* v. *United States*, supra. Like *Johnson* v. *Nelson*, supra, this Court concludes that actions by the officers to refuse to implement a vote of the majority violates § 501 and cannot be allowed to pass without relief. "*If* there have been some labor union officials who have thought that they could flaunt the rights of the union member with immunity from the courts, they should be thoroughly disabused of the notion. . . . This Court sees no reason to leave the slightest doubt in the mind of the autocratic union official that the will of Congress [in enacting § 501] is going to be strictly enforced." *Nelson* v. *Johnson*, supra, at p. 273.

RELIEF

29 U.S.C.A. § 412 provides that for violations of § 411 the Court may give "such relief (including injunctions) as may be appropriate."

29 U.S.C.A. § 501(b) provides that the member may recover "damages or secure an accounting or other appropriate relief for the benefit of the labor organization."

It has been held that the injunction under § 411 can be mandatory in form, *Magelssen* v. *Local Union No. 518, Operative Plasterers*, 240 F.Supp. 259 [W.D. Mo. 1965]. In that case, the Court ordered the local which had wrongfully transferred a member's dues book to the international union to exercise its best efforts to secure the return of the book. An award of $500 to each union member who was improperly disciplined by the union was held not to be

excessive relief under § 411 in *Local Lodge #455, Int. Bro. of Boilermakers* v. *Terry*, 398 F.2d 491 [5th Cir. 1968]. In *Nelson* v. *Johnson*, supra, the remedy fashioned pursuant to § 501 was to require the officials of the union to implement the vote of the majority of the members, which they had been refusing to do.

Here, the Court, in accordance with the principles of the foregoing decisions, will grant the following relief for the proven violations of §§ 411 and 501 by the defendants:

1. The defendant, Omaha-Council Bluffs Sheet Metal Contractors Association will be dismissed as a party defendant.

2. The defendant, Sheet Metal Workers National Pension Fund, will be dismissed as a party defendant.

3. The defendants will be jointly and severally liable for damages in an amount equal to the amount of money that has been deducted from the wages of the members of Local #3 since August 2, 1971, and paid to the Sheet Metal Workers National Pension Fund. This amount should be calculated as of a date not to exceed 30 days from the date of this decision, as agreed upon by the parties and submitted to the Court for approval. If the defendants can legally obtain back from the Sheet Metal Workers National Pension Fund the amount of this judgment, it may be used to satisfy this portion of the judgment. The funds will be paid into an escrow account in the local bank used by Local #3. Following the negotiation of the new contract, if the parties can agree to a final vote to be binding for the duration of the new contract on the pension plan controversy, then the funds are to be held in the escrow account pending the outcome of the vote. If then the vote is for participation in a pension plan, the funds are to be paid from the escrow account to the particular plan chosen. If no agreement can be reached as to having a vote or the vote that is held is against any plan, then the funds are to be returned pro rata to the members of Local #3, from whose

paychecks the funds were deducted, whether or not they are presently members of Local #3.

4. The defendants will be enjoined from further delaying the implementation of the October 22, 1971, vote and will be required to cease within thirty (30) days all participation on the part of the members of Local #3 in the Sheet Metal Workers National Pension Fund. This particular date should also be agreed upon by the parties and submitted along with the judgment amount as above ordered;

5. To insure that this decision is not futile, the defendants will be enjoined from negotiating into the new contract any pension provision more binding on Local #3 or its members than the present contractual provisions. In addition, the defendants wil be enjoined from taking any action to dissolve Local #3, in order to assign its members to other Locals that do participate in the National Plan.

Dated this 31st day of May, 1972.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 72-1411

ANTHONY G. PIGNOTTI, As an Individual Member of Local #3 Sheet Metal Workers International Association, Appellee,

v.

LOCAL #3 SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, SHEET METAL WORKERS INTERNATIONAL ASSOCIATION; LESTER FOREMAN; WALTER BRADER; EDWARD J. CARLOUGH; and DAVID TODD, Appellants.

Appeal from the United States District Court
for the District of Nebraska

Submitted: February 12, 1973

Filed: April 20, 1973

Before GIBSON and ROSS, Circuit Judges, and BENSON,* District Judge.

GIBSON, Circuit Judge.

Opinion of the Court of Appeals

This case concerns the merits and the applicability of §§ 411 and 501 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. §§ 501 and 411,[1] (com-

---

* United States District Judge for the District of North Dakota, sitting by designation.

[1] 29 U.S.C.A. § 411(a)(1) provides that:

"Equal rights.—Every member of a labor organization shall have equal rights and privileges within such organization to

monly referred to as the Landrum-Griffin Act) to an internal dispute between certain union members and certain of the officers of a Local and International Union. The District Court of Nebraska, Judge Robert Denney, granted relief in an opinion reported in 343 F.Supp. 236 (D.Neb. 1972).

Plaintiff Anthony Pignotti is suing as an individual member of Local Union Number 3, Sheet Metal Workers' International Association. There are six defendants; Local No. 3, Sheet-Metal Workers' International Association (Local No. 3); Sheet Metal Workers' International Association (International Association); Lester Foreman, Business Agent for Local No. 3; Walter Brader, President of Local No. 3; Edward J. Carlough, General President of the International Association; and David Todd, Interna-

---

nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws."

29 U.S.C.A. § 501 provides in part:

"(a) The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party or in any manner connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction or in behalf of the organization. . . ."

tional Representative of the International Association and trustee of Local No. 3 under a trusteeship imposed by the International Association. The Omaha-Council Bluffs Sheet Metal Contractor Association and the Sheet Metal Workers' National Pension Fund (National Fund) were named defendants in the complaint but have been subsequently dismissed.

Under the collective bargaining agreement entered into on July 26, 1969, and running to May 31, 1972, the Contractor Association agreed that upon 30 days notice by Local No. 3, its members would begin deducting a designated amount from wages and pay that amount into a pension fund. A Pension Committee was appointed by Local No. 3 to study the various alternative pension arrangements. The committee met at various times from February 19, 1970, until December 18, 1970. The original members of the committee were Robert Wild, James Pignotti, the brother of the plaintiff, James Newberger, and Robert Holtz. At a later date Robert Wild left the committee and was replaced by defendant Walter Brader (president of the Local) who appointed himself to the committee. The committee contacted a number of major insurance companies and received proposals from at least two of them. In addition the committee heard proposals from a savings and loan association and from the National Fund.

The committee submitted a final report in January 1971. The members of the committee were not in agreement. Three pension plans, including the National Plan were sent by mail to the membership of Local No. 3 accompanied by letters of position by each of three of the four members of the pension committee. (James Pignotti for some reason was not included.) A special meeting was called for March 25, 1971, "to vote for or against a pension plan," and if approved, "the amount of money to be contributed and the month contributions will begin." The

motion put by defendant Lester Foreman, however, was to adopt the National Plan. On a standing vote the motion was defeated, 66 for to 93 against.

At the next regular meeting, April 1, 1971, a motion was made to have a special order of business at the next regular meeting to vote on the question "to have or not to have a pension plan." That motion carried. In the interim on April 20, 1971, a petition was presented in proper form to President Brader requesting a special membership meeting to vote by secret ballot whether "to commence contributing 20¢ to the [National Plan] on June 2, 1971." Brader stated that he did not honor the petition at that time because of the special order of business which would vote on the plan at the next regular meeting.

That meeting was held on May 6. The motion was orally submitted to the members whether to have any plan. The vote was taken by secret ballot with the voters writing either yes or no on a blank piece of paper. There were 58 "no" votes and 43 "yes" votes. After this motion had been disposed of a motion was made by James Pignotti "to postpone indefinitely the pension plan and reference thereto (Rule 23)".[2] The vote on this motion by show of hands was announced by Walter Brader as 24 "for" and 29 "against." A division of the house was called for and the vote taken again with the result of 60 "for" and 30 "against" the motion. Thus the motion passed.

President Brader wrote to the International Association to inquire whether the procedure followed at this meeting was proper. He was answered by Lonnie Gaither, assistant to General President Carlough, and advised that the motion to postpone indefinitely was out of order because no

---

[2] The reference to "Rule 23" is a reference to Rule 23 of the Ritual of the International Association which reads: "When a question is postponed indefinitely, it shall not come up again except by two-thirds vote."

main motion was pending at the time of the motion[a] and that the vote by a division of the house was not proper because he had already declared the vote on the question before the vote by division of the house was called for under Rule 27 of the Ritual.

Brader then decided to honor the petition for the special meeting which had been presented to him on April 20. The announcement of the meeting was by post card and read:

> "The purpose of this meeting will be to vote by secret ballot for Sheet Metal Workers No. 3 to commence contributing 20¢ to the Sheet Metal Workers National Pension Plan on June 2, 1971."

After this meeting was called to order but before a vote could be taken on the pension plan, Jess Steward raised a point of order challenging consideration of the pension plan on the grounds that "the issue was defeated at the last regular meeting, and this meeting constitutes a motion to reconsider and this is out of order." President Brader overruled the point of order. The chair was challenged and the challenge upheld by a vote of 51-50. A motion to adjourn was made, a point of order raised against the adjournment and overruled by the chair, and the motion to adjourn passed. No vote on the pension plan was taken at this meeting. A protest against the adjournment was made to General President Carlough by a member present at the meeting. Brader also wrote to Carlough and asked if the International Association could exercise its powers to call a special meeting to vote on the pension plan.

On June 11, 1971, the representative of the International Association, Eugene Edwards, notified the officers of Local No. 3 that he was calling a special membership meeting of the Local for June 21. On June 15, written notice of this

---

[a] The Union cites Robert's Rules of Order as authority for this ruling. Robert's Rules are made applicable to the local under Rule 5 of the Ritual.

meeting was mailed to the entire membership. The meeting took place and 151 members signed in. There were 77 votes for participation in the National Plan, 71 against participation and 3 votes were not counted as incorrectly marked. On June 29 President Brader gave notice to the Contractor Association that the plan was to be put into effect as of August 1.

A petition was then circulated by the anti-pension group and on July 15 it was presented by Brader. It was signed, as required, by more than 10 per cent of the membership of Local No. 3 and called for a special meeting "for the purpose of voting down the pension contributing plan previously passed on June 21, 1971." Receiving no response to this petition, a complaint was filed on July 26, 1971, in the United States District Court for the District of Nebraska asking the Court to require a special meeting of Local No. 3. This suit was dismissed by the Court on August 31, 1971, for failure to state a claim.

A special membership meeting was called for October 22, 1971, pursuant to the petition. The members voted by secret ballot. The vote was 175 against retaining the National Plan and 119 in favor of the Plan.

On October 20, Brader sent a telegram to the Contractor Association requesting a meeting about the pension plan. No response was received to this communication. A second telegram was sent on November 17 and the Contractors responded agreeing to the meeting. The meeting was held on December 2. The Contractor Association agreed to reopen the contract to delete the pension plan but stated that they would require the Union to accept three conditions.[4] Local No. 3 requested an opinion from its attorney

---

[4] The conditions were:

"1. It [the request] is made in writing and in such a manner that it needs no further union ratification to complete the re-opening and execution of all necessary documents.

"2. The pension trustees release the contractor's association from all liability for the deletion and the union agrees to hold

on the contractors' conditions and he submitted an opinion letter on January 3, 1972, in which he advised against agreeing to these conditions.

On January 4, 1972, Local No. 3 was placed under a trusteeship by General President Carlough. David Todd, an International Representative, was trustee. On March 23, 1972, the General Executive Council ratified and approved this action. There was no opposition to the trusteeship presented to the Council. David Todd has indicated that he will continue the Local's participation in the pension plan.

The foregoing is a chronology of the events which led this dispute to the United States District Court. From these facts and the other findings of fact that Court found:

> ". . . defendants, Carlough, Brader and Foreman, early in 1971 set out to obtain participation of Local #3 in the National Plan, whether the majority of the Union wanted the plan or not * * * that the purpose of the trusteeship was to prevent any further action of the members toward implementing the vote to discontinue the Plan." *Pignotti* v. *Local No. 3 Sheet Metal Workers Int. Ass'n*, 343 F.Supp. 236, 243-44 (D.Neb. 1972).

The Court further found that these activities constituted violation of both § 411 and § 501 and ordered relief as follows:

(1) The defendants are jointly and severally liable for damages in the amount deducted from the wages of the

---

the association and it's [sic] members harmless from any liability from deletion of the pension trust.

"3. In the event agreement is reached to delete the pension provision as requested it will be conditioned that the pension cannot be re-instated during the remainder of this contract."

members of Local No. 3 since August 2, 1971, and paid to the Sheet Metal Workers' National Pension Fund.[5]

(2) Defendants are required to cease within 30 days participation on the part of the members of Local No. 3 in the Sheet Metal Workers' National Pension Fund.

(3) Defendants are enjoined from negotiating into any new contract any pension provision more binding than the one contained in the contract of July 26, 1969.

(4) Defendants are enjoined from dissolving Local No. 3 in order to assign its members to locals that do participate in the National Plan.

Appellants claim that certain of the findings of fact by the trial court are clearly erroneous. Although appellants' presentation of these issues lack specificity in some instances, we have reviewed the objections and think the District Court's findings of fact have sufficient evidentiary support in the record. They are, therefore, not clearly erroneous.

Appellants' legal arguments on this appeal can be divided into four areas. (1) The nature of the pension plan as the subject of collective bargaining brings it outside the scope of the Landrum-Griffin Act. (2) The appellants did not violate § 411. (3) The appellants did not violate § 501. (4) Some members of the Union may have now acquired vested rights in the pension plan which cannot be destroyed since they are not parties to this action.

---

[5] The Court held that if the defendants could legally recover the amount of this judgment that had been paid into the Pension Fund, such amount could be used to satisfy this judgment. The funds are to be put into an escrow account. Following the new contract, if the parties can agree to a new and final vote on the question of participation in a pension fund such shall be held. If the vote favors participation the funds are to be paid from the escrow account to the particular fund chosen. If the vote opposes participation or if no agreement can be reached on having a vote the money is to be paid pro rata to the members of Local No. 3 from whose paychecks the funds were deducted.

Collective Bargaining

Appellants' collective bargaining argument is that participation or non-participation in the pension plan is a collective bargaining issue rather than an internal union issue and that only internal union issues are the proper concern of the Landrum-Griffin Act. This argument is not well taken. The action seeks to preserve the democratic processes in Local No. 3, a proper subject of concern under the Landrum-Griffin Act. The issue raised is whether the method used by the Union officials to secure the Local's participation in the plan, violated §§ 411 and 501 of the Act.

Section 411

Appellants argue that each and every step in the passage of the Pension Plan was in accord with the International's Constitution and by-laws (including Robert's Rules of Order), and thus cannot constitute a violation of § 411. They argue that far from denying democratic participation in the union affairs to the members of the local that they actually preserved such rights by their actions.[e] Appellants cite *Vestal* v. *Hoffa*, 451 F.2d 706, 709 (6th Cir. 1971), *cert. denied*, 406 U.S. 934 (1972) for the proposition that the union officials and not the courts are the proper parties to interpret the union's constitution. We agree generally with this proposition of law, provided, as recognized in *Vestal*, that the interpretations are fair and reasonable. But we also recognize, as did the Court in *Sabolsky* v. *Budzanoski*, 457 F.2d 1245 (3d Cir.), *cert. denied*, 409 U.S.

---

[e] Nevertheless it appears that the District Court's finding that plaintiff and the anti-pension group were unfairly treated by the Union's procedural decisions is correct. An example of this is the Union's position that the vote favorable to the plaintiff on the motion to postpone indefinitely was improper because the chair had already announced the vote. The primary purpose of a call for a division of the house is to test the chair's announcement of the vote in situations such as this where the chair's announcement was obviously incorrect.

853 (1972) that "[C]ourts have not hesitated to strike down so-called 'authorized' union conduct alleged to be based on a rule or by-laws fairly interpreted, where such conduct violates the provisions of the Landrum-Griffin Act." 457 F.2d at 1252. In our own case of *Johnson* v. *Nelson*, 325 F.2d 646 (8th Cir. 1963) we cut past the question of whether the interpretation of the by-laws and constitution of a union was "authorized' to determine whether the conduct of the union officials, in refusing to act according to the majority vote of the membership, constituted a violation of their § 501 fiduciary duties. The Act does not permit the violation of rights guaranteed to union members under § 411 upon a showing that the violation was in accord with the union's constitution and by-laws.

Appellants further argue that the allegation by the plaintiffs and the finding by the Court that the trusteeship was imposed for the purpose of preventing any further action by the members to implement the vote to withdraw from the National Plan was in effect an impermissible collateral attack on the trusteeship and not a direct attack as provided in § 464. Appellants contend that this deprived them of the benefit of the statutory presumption of validity which attaches to a trusteeship under § 464(c) for a period of 18 months, absent "clear and convincing proof" that the trusteeship was not established for a purpose allowable under the statute. Appellee correctly points out that the presumption is operative only in proceedings pursuant to that section of the Act attacking the validity of the trusteeship, and that Judge Denny did not invalidate the trusteeship but only found that it was established by Carlough for a purpose which was a violation of both § 411 and § 501. There was no finding that the ratification of the trusteeship by the International's Executive Council was for a purpose other than one allowed by the Act and thus the trusteeship is still valid.

We also note 29 U.S.C. § 466 provides that the remedies provided by the subchapter of which it is a part, which

includes § 464, are not exclusive. Thus the right to sue under § 412 is not affected by the right to attack trusteeships under § 464. The 18-month presumption of validity for trusteeships is available only in proceedings under § 462.

The District Court held that Trustee David Todd violated § 411 by refusing to take steps to implement the October 22 vote to withdraw from the National Plan and by his expressed intention to incorporate the National Plan into the next contract which would be negotiated while he was trustee and thus not be subject to ratification by the membership of Local No. 3. The Court recognized that a trusteeship suspends local autonomy for the duration of the trusteeship and that the trustee has no obligation to call meetings or allow the members to vote. However, the Court held that the trustee did have an obligation to carry out the vote which had been made prior to the imposition of the trusteeship. While we can find no cases on this issue, we believe that a trustee, as a fiduciary, has an obligation to correct the effects of past denials of rights guaranteed to union members by § 411, and his failure to correct these past injustices is in itself a violation of § 411 as well as being a violation of § 501. The Congressional impositions of fiduciary obligations upon agents and officers of unions would be meaningless if all of these duties could be abrogated by the mere device of imposing a trusteeship. Past wrongs call for a remedy, not technical objections.

SECTION 501

Initially all parties agree that neither the International Association nor Local No. 3 have violated § 501 as that section imposes liability only on the individual union officials. See, *Sabolsky* v. *Budzanoski*, 457 F.2d 1245, 1249 (3d Cir), *cert. denied*, 409 U.S. 853 (1972).

We are invited by the appellants to reconsider our holdings in *Johnson* v. *Nelson*, 325 F.2d 646 (8th Cir. 1963),

concerning the scope of § 501(a), on the basis of contrary decisions in the Second and Ninth Circuits. In *Johnson* v. *Nelson* we were concerned with a situation similar to the one in the instant case. The court there found that because of personal feelings the officials of a local union had refused to pay certain attorney's fees that had been approved by a constitutional vote of the membership. *Johnson* viewed § 501 as imposing broad fiduciary duties on the officers, agents, shop stewards, and other representatives of a labor organization and that the officers by allowing their personal feelings to interfere with the performance of their duties "failed 'to refrain from dealing with such organization [Local] as an adverse party or in behalf of an adverse party in any matter connected with his [their] duties' [§ 501(a)]." 325 F.2d at 653. These acts constituted a breach of their fiduciary duties imposed by § 501(a). The Second Circuit in *Gurton* v. *Arons*, 339 F.2d 371 (2d Cir. 1964) and *Coleman* v. *Brotherhood of Ry. & Steamship Clerks, Freight Handlers, Express & Station Employees*, 340 F.2d 206 (2d Cir. 1965), has restricted the scope of § 501(a) only to situations involving "money and property" of the union. The Ninth Circuit appeared to follow *Gurton* in *Phillips* v. *Osborne*, 403 F.2d 826 (9th Cir. 1968). However, that Court in a recent case explicitly held this issue to be an open one in that Circuit, stating:

> "The position of the court in Johnson v. Nelson that § 501 is not limited to breaches of trust directly involving officers' handling of union money or property has been termed the 'majority' view. Cefalo v. Moffet, D.C. Cir., 1971, 449 F.2d 1193, 1198 n.15. The question remains open in this circuit. Our citation of Gurton v. Arons, *supra*, in Phillips v. Osborne, 9 Cir. 1968, 403 F.2d 820, 830, does not commit us to follow *Gurton*. We cited *Gurton* as merely illustrative of a point of view." *Kerr* v. *Shanks*, 466 F.2d 1271, 1275 n.2 (9th Cir. 1972).

The reason for the difference in interpretation between *Gurton* and *Johnson* can be found in the interpretation of the legislative history of the Act as it was considered by each court.

The Second Circuit in *Gurton*, as to the legislative history of the Act, referred the reader to the opinion of the district court, *Guarnaccia* v. *Kenin*, 234 F.Supp. 429, 442 (S.D.N.Y. 1964), which stated:

> "The legislative history of the Section would appear to also be in accord with defendants' position that the Section relates solely to questions of financial dealings. Thus during the course of debate, Senators McClellan and Ervin made it quite clear that the Section would relate solely to matters of money and property. See II Leg. History 1129-31 (1959)."

This debate concerned the fiduciary provision included as § 501 of S. 1555, the Kennedy-Ervin Bill.

Our court in *Johnson* v. *Nelson*, 325 F.2d at 650, made a careful analysis of Title V of the Landrum-Griffin Act and concluded the explicit language of § 501(a) imposed a broad fiduciary obligation on union officers and representatives and approved the thorough and detailed analysis of the legislative history contained in the district court opinion in *Nelson* v. *Johnson*, 212 F.Supp. 233, 284-96 (D.Minn. 1963). Judge Larson's analysis should be read for an in-depth understanding of the history of the Act. However, for the purpose of this opinion it will suffice to follow the Act from its introduction in the Senate to its ultimate passage.[1]

---

[1] The legislative history of the Labor-Management Reporting and Disclosure Act of 1959 has been compiled by the National Labor Relations Board and published as a two volume set entitled *Legislative History of the Labor Management Reporting and Disclosure Act of 1959*. Citations relevant to legislative background will be to this set.

The original bill in the series was S. 1555 (the Kennedy-Ervin Bill). It was passed by the Senate containing a very narrow fiduciary provision, specifically pertaining to the handling of money and property of the labor organization by its officials. After passage by the Senate the bill was sent on April 25, 1959, to the House and referred to the Committee on Education and Labor.

Four separate bills were introduced in the House. (1) H.R. 7265 (the Kearns Bill) on May 20, (2) H.R. 3342 (the Elliot Bill) on July 23, (3) H.R. 8400 and H.R. 8401 (Identical bills introduced concurrently and known as the Landrum-Griffin Bill) on July 24 and (4) H.R. 8490 (the Skelly Bill) on August 3. These were all referred to the Committee on Education and Labor. The significant bills of this group were the Elliot Bill and the Landrum-Griffin Bill. The Elliot Bill contained a fiduciary provision as § 501 which was identical to the one in the present Act. The fiduciary provision in the Landrum-Griffin Bill was identical to the Elliot Bill. The Committee reported favorably the Elliot Bill on July 30. The Committee Report contained the following comments on § 501:

> "The committee bill also contains provisions dealing with breaches of trust and other questionable transactions, which, although not seriously criminal, nevertheless are incompatible with a strong and honestly run labor movement." I Leg. Hist. 768.

In the Supplementary Views by Representative Elliot and four other Members of the House it was stated:

> "Union officials occupy positions of trust. They hold property of the union and manage its affairs on behalf of the members. It is the duty of union officers just as it is the duty of all similar trustees to put their obligations to the union and its members ahead of any personal interest.

"The committee bill sets forth this principle unequivocally and declares that union officers and agents occupy positions of trust in relationship to labor organizations and their members. It then sets forth their duties in terms which the common law applies to all persons who undertake to act on behalf of others:

> "'* * * to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted hereunder, to refrain from dealing with such organization as an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization.

"We affirm *that the committee bill is broader and stronger than the provision of S. 1555 which relate to fiduciary responsibilities.* S. 1555 applied the fiduciary principle to union officials only in their handling of 'money or other property' (See S. 1555, sec. 610), apparently leaving other questions to the common law of the several States. Although the common law covers the matter, we considered it important to write *the fiduciary principle explicitly into Federal Labor legislation. Accordingly the committee bill extends the fiduciary principle to all the activities of union officials and other union agents or representatives.*" I. Leg. Hist. 839 (emphasis added).

The additional Statement by Hon. Phil M. Landrum and Hon. Robert P. Griffin opposed the Elliot Bill in favor of

their own substitute, the Landrum-Griffin Bill. But, of this substitute they said:

> "In general, the substitute is framed on the bill reported by the committee; we have retained the committee's technical amendments and many other features of the committee bill which make a contribution to an effective labor reform measure. There are no 'strangers' in our substitute bill; every provision was thoroughly considered by the full committee." I Leg. Hist. 857.

On the floor of the House during debate, Representative Griffin made this statement concerning his bill:

> "For a moment, I believe attention should be focused upon the similarities between the committee bill and the substitute, H.R. 8400. For example, in both bills, * * * title V—covering the fiduciary responsibility of union officers, bonding, loans, restrictions against the Communists and exconvicts holding office—[is] identical without a word or a common changed." II Leg. Hist. 1566.

As previously stated the Committee reported the Elliot Bill favorably. When the committee approved Bill was considered by the House it was amended by substituting the Landrum-Griffin Bill *in toto* for the provisions of the committee approved Elliot Bill, II Leg. Hist. 1691. S. 1555 was then amended by substituting the Landrum-Griffin provisions (now number H.R. 8342 however) for its provisions. II Leg. Hist. 1701. S. 1555, as thereby amended, was then passed by the House. II Leg. Hist. 1702. It went to a conference where § 501 survived unchanged and ultimately became § 501 of the Labor-Management Reporting and Disclosure Act of 1959.

From this outline it can be seen that consideration of the remarks of Senators McClellan and Ervin in regard to § 501 of S. 1555 would tell us nothing about the legislative

history of § 501 as finally passed without further reference to the legislative history of the Elliot Bill which was incorporated in the Landrum-Griffin Bill and which became the law. The quoted material shows that the Elliot Bill strongly favored the broad scope application of the fiduciary provisions of § 501(a) and not the narrow provisions referred to in the remarks of Senators McClellan and Ervin.

Based on the history outlined above it appears clear that *Gurton* v. *Arons*, based as it was on the legislative history of the Kennedy-Ervin Bill which was amended out of existence, was unduly restrictive of the scope of the fiduciary duties of union officials commanded by § 501, and that *Johnson* v. *Nelson*, basing its decision on the legislative history of the Elliot Bill, was properly decided.

The Third Circuit has recently adopted the broad scope interpretation of § 501. The United States District Court for the Western District of Pennsylvania had dismissed an action brought under § 501 on the ground that the remedy was available only in actions dealing with money or property of a labor organization, citing *Gurton* and its progeny. *Antal* v. *Budzanoski*, 320 F.Supp. 161, 164 (W.D.Pa. 1970). On appeal the court first found that the complaint did state a cause of action dealing with the holding and expenditure of union funds and further, citing with approval *Johnson* v. *Nelson*, the court disagreed with the district court's "reading" of § 501. *Sabolsky* v. *Budzanoski*, 457 F.2d 1245, 1250-51 (3d Cir.), *cert. denied*, 409 U.S. 853 (1972).

The District of Columbia Circuit has recognized that it, at least impliedly, has adopted the broad scope view of § 501, *Cefalo* v. *Moffit*, 449 F.2d 1193, 1198 n.15 (D.C.Cir. 1971), "[by] approving payment of counsel fees [in *Bakery & Confectionary Workers Int. Union* v. *Ratner*, 335 F.2d 691 (D.C.Cir. 1954)] to an attorney who had successfully represented union members in a § 501 suit which sought relief for violations not involving property rights."

Appellants have not advanced any substantial arguments which would cause us to change our position with regard to the scope of § 501(a) and we decline to do so. In fact our re-examination of *Nelson* v. *Johnson* convinces us that the broader view of fiduciaries' responsibilities is correct, based on Congressional intent and the explicit language of § 501 (a).

Appellants raise a second issue with regard to § 501. They argue that it gives jurisdiction for suits only for relief for the benefit of the labor organization.[8] Appellants allege that this action falls outside the statute as it seeks relief for the individual members rather than relief for the benefit of the labor organization.

This position was adopted by the Ninth Circuit in *Phillips* v. *Osborne*, 403 F.2d 826, 832 (9th Cir. 1968). In *Phillips* the officers of Local 580, International Brotherhood of Pulp, Sulphite & Paper Mill Workers, AFL-CIO, fearing that the members of the local would soon disaffiliate the local from the International Brotherhood and associate with the Western Pulp & Paper Workers, a newly formed, rival labor organization, placed the assets of the local in an escrow account under the control of the International Brotherhood and beyond the reach of the local union. The next day the members sought to have the assets returned to the local but the officers refused. The membership then voted to disaffiliate and join the Western group. Plaintiff Phillips was the president under the new organization. Defendants were the former officers of the local who had transferred the assets. The relief requested was a pro rata distribution of

---

[8] Section 501(b) reads in pertinent part:

"When any officer, agent, shop steward, or representative of any labor organization is alleged to have violated the duties declared in subsection (a) of this section * * * [a] member may sue such officer * * * to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization.

the transferred assets to the members of Local 580 at the time of the disaffiliation. The court held that such relief was "not for the benefit of the labor organization."

We need not decide whether *Phillips* was correctly decided as the instant case is easily distinguishable as to the relief requested of the court. The restoration of orderly democratic processes to the local union is clearly a benefit to the labor organization, and a proper subject of concern to the entire membership. *Bakery & Confectionary Workers Int. Union* v. *Ratner*, 335 F.2d 691, 696 (3d Cir. 1964); *Retail Clerks Union Local 648* v. *Retail Clerks Int. Ass'n.*, 299 F.Supp. 1012, 1022 (D.C.C.C. 1969). In *Johnson* v. *Nelson* the relief sought was a payment of fees owing to attorneys but the enforcement of such relief, as the enforcement of the mandate issued by the membership to its officers and disregarded in violation of their fiduciary duties, was clearly of benefit to the membership. Here the correction of the past violations of the rights of the members and the breaches of the fiduciary obligations by both the local and International officers will be a benefit to the local even though the relief must necessarily include the restoration of the funds withheld as a result of the defendants' wrongful acts.

The final point raised by appellants, that some members of Local No. 3 might have a vested right in the pension fund which cannot be destroyed since they are not parties to the suit, is without merit. Appellants have not shown that any such person exists although they were in a position to do so if they wished. Further, this objection cannot be used to thwart correction of past abuses of trust. If such a situation does arise, the defendants *conceivably* are responsible therefor; however, the legal effects of a vested interest situation, if any, must await future resolution.

Judgment affirmed.

Judgment

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 72-1411. September Term, 1972

ANTHONY G. PIGNOTTI, as an individual member of Local # 3 Sheet Metal Workers International Association, *Appellee,*

vs.

LOCAL #3 SHEET METAL WORKERS INTERNATIONAL ASSOCIATION; SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, *Appellants;*

SHEET METAL WORKERS NATIONAL PENSION FUND; LESTER FORMAN; WALTER BRADER; EDWARD J. CARLOUGH; DAVID TODD, *Appellants;*

OMAHA-COUNCIL BLUFFS SHEET METAL CONTRACTORS ASSOCIATION.

APPEAL FROM the United States District Court for the _____ District of Nebraska.

THIS CAUSE came on to be heard on the record from the United States District Court for the _____ District of Nebraska and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed.

April 20, 1973